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IN THE UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In re:
 DANIEL M. CANCHOLA,
 Debtor.

Case No. 17-11346-B-7
 Chapter 7
 DC No.: RWR-2
 Date: April 24, 2019
 Time: 9:30 a.m.
 Dept: B
 Ctrm: 13, Fifth Floor
 Location: 2500 Tulare Street
 Fresno, CA
 Judge: Honorable Rene Lastreto

In re:
 MARIO ALBERTO GUERRA,
 Debtor.

Case No. 17-11365-B-7
 Chapter 7
 DC No.: RWR-2
 Date: April 24, 2019
 Time: 9:30 a.m.
 Dept: B
 Ctrm: 13, Fifth Floor
 Location: 2500 Tulare Street
 Fresno, CA
 Judge: Honorable Rene Lastreto

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
TRUSTEES' MOTION TO COMPROMISE A CONTROVERSY

JAMES E. SALVEN, the Chapter 7 Trustee ("Trustee") of the bankruptcy estate of
 Daniel M. Canchola ("Debtor Canchola") and PETER L. FEAR, the Chapter 7 Successor
 Trustee ("Trustee") of the bankruptcy estate of Mario Alberto Guerra ("Debtor Guerra"), have

1 moved this Court for an order authorizing them to compromise a controversy pursuant to Federal
2 Rule of Bankruptcy Procedure Rule 9019 (the "Motion") as follows:

3 In support of the Motion, Trustees respectfully represent as follows:

4 **I.**

5 **JURISDICTION**

6 This Court has jurisdiction to consider this Motion under 28 U.S.C. Sections 157 and
7 1334. Venue is proper pursuant to 28 U.S.C. Sections 1408 and 1409. This is a core proceeding
8 pursuant to 28 U.S.C. Sections 157(a) and 157(b)(2). The parties have consented to entry of a
9 final judgment by the Bankruptcy Court.

10 **II.**

11 **BACKGROUND**

12 This motion to compromise involves the compromise of a potential recovery of money to
13 be divided between two separate bankruptcy estates. The first estate is that of Daniel M.
14 Canchola (Case Number 17-11346). James E. Salven is the duly appointed and acting Chapter 7
15 Trustee of the Canchola estate. The second estate is that of Mario Alberto Guerra (Case Number
16 17-11365). Peter L. Fear is the qualified and acting Chapter 7 Successor Trustee following the
17 resignation of previous acting Trustee, Trudi G. Manfredo, for the Guerra estate. The Debtors
18 filed their respective chapter 7 bankruptcy petitions on April 12, 2017.

19 Mr. Guerra is or was the owner of Guerra Produce. Mr. Guerra hired Mr. Canchola to
20 drive a truck to make deliveries. Unfortunately, a traffic accident occurred involving the truck
21 driven by Mr. Canchola. On December 11, 2013, a Complaint was filed in the Fresno County
22 Superior Court that alleged Mr. Canchola and Mr. Guerra (along with other Defendants)
23 negligently caused a traffic accident resulting in the wrongful death and serious injuries of
24 several persons.

25 A trial was set to begin on April 24, 2017, in the Fresno County Superior Court. A Good
26 Faith Settlement Hearing was set for April 13, 2017. On April 11, 2017, Debtor Canchola filed a
27 Chapter 7 bankruptcy petition. Debtor Guerra filed a Chapter 7 bankruptcy petition on April 12,
28 2017. The Plaintiffs sought and obtained relief from stay in both bankruptcy cases so that they

1 could pursue and recover from the Debtors' insurance carrier.

2 One of the major issues in the case was the proper insurance policy limits that was or
3 should have been applicable to the vehicle owned by Guerra and driven by Canchola. The policy
4 that was issued had limits of \$25,000/\$50,000. The vehicle was being used, and was alleged to
5 have always been used, as a commercial vehicle. In California the minimum limits for a
6 commercial vehicle is \$750,000. The Plaintiffs made a demand for the commercial policy limits
7 which was ignored and Infinity offered the consumer policy limits. Early on it was anticipated
8 that a bad faith claim would be brought and the issue eventually decided in the bad faith case.
9 Eventually the underlying case was settled by means of an unusual agreement whereby Infinity
10 paid the lower policy limits, the Plaintiffs dismissed the underlaying lawsuit yet preserved their
11 rights to bring a direct action for bad faith against Infinity. The Debtors were not a party to this
12 agreement as they had filed bankruptcy and Infinity did not contact either trustee concerning the
13 lawsuit. The agreement makes no reference to the Debtors and does not attempt to limit the
14 rights of the Debtors or their Estates. The Debtor's, through their respective estates will pursue
15 their claims, including but not limited to emotional distress damages and punitive damages.

16 The Trustees of the two Debtors respective estates seek approval of an agreement that
17 allows the estates to hire one attorney to prosecute the bad faith and/or tortious injury action on
18 behalf of both estates and share in any settlement pursuant to the terms set forth in the agreement.
19 In the event that no settlement is reached and the action goes to trial then the estates agree that
20 the verdict or decision shall dictate as to what monies shall go to which estate.

21 III.

22 POINTS AND AUTHORITIES

23 Federal Rule of Bankruptcy Procedure 9019(a) provides as follows:

24 "On motion by the trustee and after notice and a hearing, the court
25 may approve a compromise or settlement."

26 A. The Court has Discretion to Approve or Deny Motions to Compromise.

27 Motions to compromise are addressed to the sound discretion of the bankruptcy judge
28 based on the particular circumstances of the case. (See *Matter of Walsh Const., Inc.*, (9th Cir.

1 1982) 669 F.2d. 1325.) In order to approve a compromise or settlement under Rule 9019(a), the
2 settlement must be in the best interest of the estate. (See *In Re: A&C Properties*, (9th Cir. 1986)
3 784 F.2d. 1377, 1382.) To determine that the settlement is in the best interest of the estate, the
4 court must find the proposed compromise to be (1) negotiated in good faith and (2) fair and
5 equitable considering the (i) probability of success in the litigation; (ii) difficulties to be
6 encountered in collecting on the judgment; (iii) complexity of the litigation involved; and (iv)
7 paramount interest of the creditors and a proper deference to their reasonable views. (See *In Re:*
8 *A&C Properties*, supra, 784 F.2d. at 1381.)

9 The Movant has the burden of proving (by a preponderance of the evidence) that the
10 motion to compromise is in the estate's best interest. (See *In Re: A&C Properties*, supra, 784
11 F.2d. at 1381.) The court is not required to decide disputed questions of fact and law raised by
12 the litigation, but to canvas the issues to see whether the "settlement falls below the lowest point
13 in a range of reasonableness." (See *In Re: Tectonics Services, Inc.*, (2nd Cir. 1985) 762 F.2d. 185,
14 189.)

15 **B. The Factors to be Considered in this Case Favor Approval.**

16 In this particular case, the court should approve the settlement as the results are
17 very favorable to the estate. Movant submits the settlement is fair and equitable under the
18 standard set forth in *A&C Properties* as follows:

19 (1) Probability of Success.

20 The Trustees acknowledge that bad faith litigation is always difficult as the
21 Plaintiff bears the burden of proof against a well funded and experienced adversary. In this case,
22 experienced trial counsel and bad faith litigation counsel have opined that they believe the facts
23 give rise to such a claim. There are undisputed facts in evidence that weigh in favor of Debtors'
24 success against Infinity.

25 (2) Difficulty in Collection.

26 The Trustees do not anticipate any difficulty in collection. The action to
27 be pursued is against an insurance company and if the matter goes to trial and the estates prevail,
28 it is presumed the insurance company has the assets to satisfy the judgment. Naturally, if the

matter were to settle the settlement amount will be deposited into a trust account prior to any dismissal of the action.

(3) Complexity of Litigation.

This litigation is very complex. It requires the employment of counsel that has knowledge and experience in bad faith litigation. In this case it requires the knowledge of insurance contract law and insurance coverage law as well as one who can identify and put on evidence of the damages the Debtors have suffered.

(4) Paramount Interest of Creditors.

This factor heavily favors approval of the agreement. The Trustees, through counsel, have met with trial counsel in the underlying action and have reviewed certain pleadings and orders in the underlying State Court case. Based on the facts of the case it seems that the interests of the two Debtors are not adverse to one another and both may have a right to damages associated with their bad faith and/or tortious injuries against Infinity, which includes among other things emotional distress and punitive damages. Permitting one attorney to maintain this action on behalf of both estates maximizes the return to the creditors.

V.

CONCLUSION

For the foregoing reasons and authorities, James E. Salven, Chapter 7 Trustee of the bankruptcy estate of Daniel M. Canchola and Peter L. Fear, Chapter 7 Successor Trustee of the bankruptcy estate of Mario Alberto Guerra, request the court enter an order approving the agreement.

Respectfully submitted,

COLEMAN & HOROWITT, LLP

Dated: March 28, 2019.

By: /s/ Russell W. Reynolds
 RUSSELL W. REYNOLDS
 Attorneys for James E. Salven, Chapter 7
 Trustee and for Peter L. Fear, Chapter 7
 Successor Trustee